IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE DHARMA RAO ELIPE

W. P. No. 27391 of 1996 & WP No. 5267 of 1998

W. P. No. 27391 of 1996

Between:

P.LalithA Kumari w/o P.Ramkrishna, Aged about 48 years,

Occu: Daily Wages Clerk, State Board of Technical Education

& Training, at Hyderabad.

..... PETITIONER

AND

1.The State Board of Technical Education and Training,

Represented by its Secretary, Mr. B.R.K., Government

Office Building, Tank Bund, Hyderabad.

2. Sumathi M. D/o not known, Aged 40 years,

3. Simhadri Naidu CH s/o not known, Aged 37 years,

4. Ramesh G. s/o not known, aged 38 years,

5. Venkateshwarlu Konda s/o not known, aged 30 years,

6. 6. Naga Kumari K., d/o not known, aged 39 years,

7. 7. Chanduji Rao s/o Not known, Aged 34 years,

8. 8. Venkatratnam s/o Not known, Aged 37 years,

9. 9. Manzoor Pasha s/o Not known, Aged 31 years,

10. Venkateswarulu s/o Not known, Aged 32 years,
11. Usha Rani N., d/o Not known, Aged 33 years,
12. Manikya Prabhu s/o Not known, Aged 33 years,
13. Parin Devi A., d/o Not known, Aged 34 years,
14. Sanjay Kumar A,. s/o Not known, Aged 29 years,
15. Obulesudu L., s/o Not known, Aged 33s years,
16. Shaikh Mohammed s/o Not known, Aged 40 years,
17. Usha Kiran P. s/o Not known, Aged 35 years,
18. Usha Rani P.B., d/o Not known, Aged 32 years,
19. Laxmikumari A., d/o not known, aged 35 yrs,
20. Sai Kumari A., d/o not known, Aged 32 years,
21. Srinivasulu B., s/o not known, Aged 35 years,
22. Naga Prasad s/o not known, aged 29 years,
23. Ram Pulla Reddy B., s/o not known, Aged 33 years,
24. Ramana M.V., s/o not known, Aged 27 years,
25. Padmaja T., d/o not known, Aged 29 years,
26. Vijaya Laxmi K., d/o not known, Aged 34 years,
27. Maniyam M., s/o not known, Aged 31 years,
28. Vishnu Vardhan K., s/o not known, Aged 29 years,

Respondents 2 to 28 are working as Junior Assistants with Respondent No.1

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to (1) issue a writ or direction, more particularly one in the nature of writ of mandamus by calling for the records relating and

connected with the seniority list of the employees working on daily wage basis and declare the same as absolutely illegal, arbitrary and unconstitutional and consequently, direct the respondent Board to consider the case of the petitioner taking into account her services rendered for four years in Census Board in terms of GO Rt. No. 4769 (Gen. Admn. Svcs-A. Department) dated 1st December, 1982; (2) Direct the respondent Board to regularize the services of the petitioner with effect from the date of her appointments in the respondent Board after taking into account her four years of services rendered in the Census Board; (3) Declare the action of the respondent Board in regularizing the services of 22 members vide proceedings No. SBTET/ESTT/C-1/DWC/90 Dated 31st August, 1991 as illegal, arbitrary and unconstitutional and inoperative so far as the petitioner is concerned and also direct the respondent Board to grant all other benefits with effect from her date of regularization; and pass such other or further orders as deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.PRATAP NARAYAN SANGHI

Counsel for the Respondent No.1: MR. P.V.S.S.S. RAMA RAO

W. P. No. 5267 of 1998

Between:

C.H. Arun Prasad s/o Ramchander Rao,

Aged 31 years, Occ: Clerk, Daily Wages,

Board of Technical Education, Hyderabad.

..... PETITIONER

AND

State Board of Technical Education, Represented by its

Secretary, Burugula Ramakrishna Rao Buildings,

Near Tank Bund, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus by calling for the records relating to and connected with Memo No.SBTET/C1/7925/95, dated 16th February, 1996 and declare the same is illegal, unconstitutional and arbitrary to the extent of finding given by the Board that the case of the petitioner does not fall in terms of the conditions of GO Ms. No. 212 dated 22.4.1994, as wholly illegal, arbitrary and unconstitutional and consequently, direct the respondent to consider the case of the petitioner in terms of GO Ms. No. 212 dated 22.4.1994 by overlooking the artificial breaks given by the respondent Board and declare that calling for the persons on deputation by the respondent Board is wholly illegal, arbitrary and unconstitutional and direct them not to call for the persons on deputation till the exhaust of the seniority list prepared by the Board in terms of judgment in WP No. 18254 dated 4.7.1991 and grant all consequential service benefits in the interest of justice and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.PRATAP NARAYAN SANGHI

Counsel for the Respondent : MR.P.V.S.S.S.RAMA RAO

The Court made the following common order:

THE HONOURABLE SRI JUSTICE BILAL NAZKI

AND

THE HONOURABLE SRI JUSTICE DHARMA RAO ELIPE

W.P. No. 27391 of 1996 & 5267 of 1998

COMMON ORDER:

(*per* The Honourable Sri Justice Dharma Rao Elipe)

Writ Petition 27391 of 1996 is filed seeking a writ of mandamus declaring the seniority list of the employees working on the daily wage basis as illegal and consider the case of the petitioner taking into account her services rendered for four years in Census Board in terms of GOMs. No. 4769 (Gen. Admn. – Services-A) Department

dated 1.12.1982, to regularize her services with effect from the date of her appointment and also to declare the action of the respondent Board in regularizing the services of 22 other members in Proceedings No. SBTET/ESTT/C-1/DWC/90 dated 31.8.1991 as illegal, arbitrary, unconstitutional and inoperative insofar as the petitioner is concerned. WP No. 5267 of 1998 is filed to issue a writ of mandamus declaring the Memo No. SBTET/C-1/7925/95 dated 16.2.1996 as illegal, unconstitutional and arbitrary insofar as the petitioner is concerned and to consider the case of the petitioner in terms of GO Ms. No. 212 dated 22.4.1994 overlooking the artificial breaks by treating the services of the persons called on deputation by the respondent Board as illegal and to exhaust the seniority list prepared by the Board in terms of judgment in WP No. 18254 dated 4.7.1991.

It is the case of the petitioner in WP No. 27391 of 1996 that she was appointed as Tabulator in the office of the Census Operation and after working as Tabulator from 8.12.1980 to 28.2.1982, since there was no further work as such, she was posted as a Coder w.e.f. 1.3.1982 and worked as such till 29.2.1984. Thereafter since the work in the Census Operation was over, the Board of Directors Census Operations took a collective decision and the staff was reduced and several persons along with the petitioner were retrenched. At the time of retrenchment, she was aged 35 years and as such there was no scope for the appointment. It is further the case of the petitioner that on the representation made by several individuals, the Government of India, Ministry of Home Affairs, Department of Personnel and AR, by their Proceedings 14024/6/81-ESTT.(D) dated 5.7.1982 granted certain concessions in favour of all the retrenched employees, such as relaxation in age, giving priority and sponsorship from the Employment Exchange, etc. on condition that the employees should have worked for more than six months in the Census Department. The said policy of the Union Government was followed by the State Government and certain guidelines were issued in GO Rt. No. 4769 Gen. Admn. (Ser.-A) Department dated

1.12.1982. In view of the above policy decision, there is no dispute with regard to the application of the guidelines issued by the State Government in pursuance of the policy decision taken by the Union Government. Therefore, the petitioner is entitled for the benefit on the ground that she has completed four years of service in Census Department as Tabulator and Coder and thereafter she was sponsored by the District Employment Exchange, Hyderabad by the letter dated 31.5.1987 and she was appointed as daily wage clerk in the Respondent Board. Though she was appointed initially for a period of two months, but continued in the respondent Board till August, 1991, on a daily wage of Rs.15/-. Several representations for regularization of her services along with others were given a dead ear by the respondent and therefore, she filed WP No. 2264 of 1990 before this High Court, which was disposed of by a common order dated 4.7.1991 giving certain directions, but since there was no positive direction in the said writ petition, the respondent Board did not consider the petitioner's case and, therefore, the petitioner preferred WA No. 1149 of 1991 which was disposed of by a Bench of this Court giving liberty to the petitioner to file a separate writ petition, inasmuch as no relief was granted by the learned Single Judge in the writ petition since it was disposed of in a batch of cases. Thus this writ petition is came to be filed.

It is pertinent to note that pursuant to the directions given by the learned Single Judge, the respondent Board has prepared Seniority List and the name of the petitioner was placed at Sl. No. 28. The claim of the petitioner is that her name must be placed at Sl. No.1 on the ground of length of service she has rendered in the Census Department. This claim, according to the petitioner, rests on the priority clause incorporated in the GO issued by the State Government.

The case of the petitioner in the other Writ Petition No.5267 of 1998 is that he was appointed as Typist on 7.10.1987 and to deprive him of the continuity of service, artificial breaks were given. Therefore, the petitioner filed WP No. 18254 of 1989 which was disposed of on

4.7.1991 and likewise the petitioner in WP No. 23791 of 1996, he also filed WA No. 275 of 1992 and a Division Bench of this Court directed the respondent to consider the case of the petitioner in terms of GO Ms. No. 212 dated 22.4.1994. But the respondents without consider his case in correct perspective in terms of the said GO, issued impugned memo and rejected the candidature of the petitioner. Thus the petitioner came up with the present writ petition.

The main contention of the petitioners in these writ petitions is that the representations made by them were not properly considered by the Respondent Board and the objections raised were not properly given effect to in the light of the priority clause incorporated in the G.O. and, therefore, the seniority list prepared by them is bereft of merit. It is also their case that the respondent failed to consider their qualifications and length of service for regularization of their services. Therefore, they sought for a direction to set aside the seniority list and to direct the respondent to consider their length of service and regularize them in the respective posts, in terms of the policy decision taken by the Union Government and followed by the State Government.

The respondent filed their counter affidavit admitting the factum of appointment of the petitioners. It is further stated that as per the policy decision of the Union Government, relaxation of age on the basis of the minimum services of six months and sponsorship from the Employment Exchange in respect of those who were retrenched from the Census Department was given for other posts in the Government Service. It is categorically stated that the Board is constituted with an obligation to conduct arious types of Diplomas and Technical Examinations and it does not carry any business activities, which generates profits, that as per the Rules, the Board may take officers and staff from the Department of Technical Education on deputation in addition to resorting to direct recruitment. The Government or the Director of Technical Education, as the case may be, shall issued

necessary orders of deputation at the request of the Board. It is also submitted that as per the policy decision, the age relaxation for three years and exemption from the sponsorship from the District Employment Exchange were given. It is further submitted that though the petitioner in WP No. 27391 of 1996 was over aged, in view of the age relaxation, she was engaged and therefore, having taken advantage of the GO, at the time of appointment, she is estopped from seeking any other benefit more particularly counting of her past services in the Census Department to place her at Sl. No.1. It is further submitted that by virtue of the date of appointment, the seniority list was prepared and at that point of time, she did not raise the issue with regard to the seniority. The petitioners have misconstrued the priority clause. There is no such policy decision to give priority to such of the employees who are sponsored by the Employment Exchange, as alleged by the petitioners or that the retrenched employees of the Census Department would be preferred with compared to the other candidates who were drawn from other sources. It is further submitted that as there were no regular vacancies, the daily wage employees who stands in the seniority list are not regularly appointed and the cases of the petitioners will be considered for regular appointment according to their own turn as per the seniority list and depending on the regular vacancies in the post of Junior Assistants.

In the earlier round of litigation, it is stated by the respondents that the name of the petitioner in WP No. 27391 of 1996 was not sponsored by the Employment Exchange and therefore, her case does not deserve consideration for regularsiation. As can be gathered from the material placed before us, prior to the appointment of the petitioner i.e. on 5.6.1987, several others were appointed from 3.12.1984 to 27.5.1987 and by virtue of their appointments and length of service, they were placed at appropriate places in the seniority list.

Several contentions raised in the present writ petition are not germane for consideration now. Evidently, it is made clear in the counter affidavits this court directed the respondent to publish a list of

daily wage employees on the basis of the length of service of each category of employees in the Notice Board by the end of July, 1991 after considering the representations. The respondent has disposed of the representations of all the daily wage employees including the petitioners and finalized the seniority list as on 31.8.1991 and, thus the impugned action of the respondent is solely based on the judgment of this court dated 4.7.1991 and in consonance of the policy decision taken by the Union Government and followed by the State Government.

Evidently, the petitioners are appointed on 5.6.1987 and 7.10.1987 respectively. Prior to their appointments, several others were appointed and attained seniority over them. If the petitioners feel that they are seniors to those appointed earlier to their appointment, they ought to have taken objection in the first instance stating that since they are retrenched employees of the Census Department and in view of the length of service they have rendered, the seniority list should be prepared taking into account the length of service rendered in the Census Department. As can be seen from the policy decision of the Union Government and the guidelines issued thereunder by the State Government, there is nothing in the communication which denotes that the length of service rendered in the Census Department shall be taken account of while fixing the seniority in the respective cadres. The policy decision taken in respect of the retrenched employees only confers the privilege of relaxation of age upto 3 years and sponsorship of the names of retrenched employees from the Employment Exchange irrespective of their crossing the age for public employment.

In this writ petition, at this moment, we are not concerned with the drawing of staff on deputation. Evidently, when there are no qualified, eligible and competent persons available in the Department, it is prerogative of the administration, to draw personnel on deputation from other departments and, the employees like that of the petitioners, have no right to contend that the should be placed above such employees, drawn on deputation, in the seniority list.

Therefore, we have no hesitation in coming to the conclusion that the petitioners have no right to contend that the seniority list shall be prepared taking into account their services rendered in Census Department, which is not the spirit of either the Judgment of this court in earlier round of litigation nor the policy decision taken by the Union Government followed by the State Government.

Insofar as the decision *Govt. of T.N. and another V. G.Mohamed Ameenudeen and others*() is concerned, the employees were recruited through the employment exchange for the purpose of census work in Tamil Nadu for specified period of 18 months from 1.2.1991 to 30.6.1992 and upon completion of the work, their services were terminated, but during the subsisting of their work, on 15.5.1991, the Government of Tamil Nadu, issued an order imposing a ban on recruitment of temporary employees for one year starting from the date of the said order excepting the candidates sponsored by the Tamil Nadu Public Service Commission. In such circumstance, considering the special features of the case, the Apex Court directed the State Government to frame a scheme to absorb such employees and others who were similarly placed and who have been retrenched. When the Government of Tamilnadu, framed the scheme in terms of the direction of the Apex Court given in *Ameenuddin's* case and when the same scheme came up for judicial scrutiny before the Apex Court in a decision N.*Palani V. Thiru A.P. Muthuswamy and another*(), the Apex Court held that the proper course was to consider the retrenched employees in a separate category and to work out a scheme to fit them in appropriate posts in appropriate departments of the State Government, local bodies and public under takings without requiring them to be sponsored by employment exchanges.

As seen above, the condition imposed by the Government of Tamilnadu that the name of the retrenched employee shall be sponsored by the Employment Exchange, was struck down by the Apex Court. Such a contingency does not arise in the present cases. The State Government, under GO Rt. No. 4769 dated 1.12.1982 has issued guidelines in consonance with the policy decision taken by

the Union Government. Accordingly, though, in terms of the guidelines, the names of the petitioners need not be sponsored by the Employment Exchange, they were sponsored and engaged as daily wage employees. Therefore, the claim of fixation of seniority over and above the employees recruited prior to recruitment is unfounded. Admittedly, the Seniority List was prepared on the basis of the directions given by this court in a batch of writ petitions. Therefore, we are unable to extend any relief to the petitioners in these writ petitions except expressing the hope and expecting that the respondent will keep up their undertaking that the cases of the petitioners will be considered for regular appointments according to their own turn as per the seniority list and depending on the regular vacancies.

Treating the said undertaking, as a direction of this court, the writ petitions are disposed of. No order as to costs.

Bilal Nazki, J.

Dharma Rao Elipe, J.

July 6th, 2004

MAS.

To:

1. 1. The Secretary , State Board of Technical Education and Training, B.R.K.R, Government Office Building, Tank Bund, Hyderabad.
2. 2. 2 CD copies.